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SENATE FILE 2194  
BY WELLS

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act regulating control share acquisitions.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2194

1 Section 1. Section 502.102, subsection 14, unnumbered  
2 paragraph 1, Code Supplement 1987, is amended to read as  
3 follows:

4 For the purposes of sections 502.211 through 502-218  
5 502.225, unless the context otherwise requires:

6 Sec. 2. Section 502.102, subsection 14, Code Supplement  
7 1987, is amended by adding the following new lettered  
8 paragraphs:

9 NEW LETTERED PARAGRAPH. i. "Control shares" means shares  
10 that, except for this chapter, would have voting power with  
11 respect to shares of an issuing public corporation that, when  
12 added to all other shares of the issuing public corporation  
13 owned by a person or in respect to which that person may  
14 exercise or direct the exercise of voting power, would entitle  
15 that person, immediately after acquisition of the shares,  
16 directly or indirectly, alone or as a part of a group, to  
17 exercise or direct the exercise of the voting power of the  
18 issuing public corporation in the election of directors within  
19 any of the following ranges of voting power:

20 (1) One-fifth or more but less than one-third of all  
21 voting power.

22 (2) One-third or more but less than a majority of all  
23 voting power.

24 (3) A majority or more of all voting power.

25 NEW LETTERED PARAGRAPH. j. (1) "Control share  
26 acquisition" means the acquisition, directly or indirectly, by  
27 any person of ownership of, or the power to direct the  
28 exercise of voting power with respect to, issued and  
29 outstanding control shares.

30 (2) For purposes of this section, shares acquired within  
31 ninety days or shares acquired pursuant to a plan to make a  
32 control share acquisition are considered to have been acquired  
33 in the same acquisition.

34 (3) For purposes of this section, a person who acquires  
35 shares in the ordinary course of business for the benefit of

1 others in good faith and not for the purpose of circumventing  
2 this chapter only has voting power of shares in respect to  
3 which that person would be able to exercise or direct the  
4 exercise of votes without further instruction from others.

5 (4) The acquisition of shares of an issuing public  
6 corporation does not constitute a control share acquisition if  
7 the acquisition is consummated in any of the following  
8 circumstances:

9 (a) Before January 1, 1989.

10 (b) Pursuant to a contract existing before January 1,  
11 1989.

12 (c) Pursuant to the laws of descent and distribution.

13 (d) Pursuant to the satisfaction of a pledge or other  
14 security interest created in good faith and not for the pur-  
15 pose of circumventing this chapter.

16 (e) Pursuant to a merger or plan of share exchange ef-  
17 fected in compliance with this chapter if the issuing public  
18 corporation is a party to the agreement of merger or plan of  
19 share exchange.

20 (5) The acquisition of shares of an issuing public cor-  
21 poration in good faith and not for the purpose of circumvent-  
22 ing this chapter, by or from a person whose voting rights had  
23 previously been authorized by shareholders in compliance with  
24 this chapter, or a person whose previous acquisition of shares  
25 of an issuing public corporation would have constituted a  
26 control share acquisition but for subparagraph (4), does not  
27 constitute a control share acquisition, unless the acquisition  
28 entitles any person, directly or indirectly, alone or as a  
29 part of a group, to exercise or direct the exercise of voting  
30 power of the corporation in the election of directors in  
31 excess of the range of the voting power otherwise authorized.

32 NEW LETTERED PARAGRAPH. k. "Interested shares" means the  
33 shares of an issuing public corporation in respect to which  
34 any of the following persons may exercise or direct the  
35 exercise of the voting power of the corporation in the

1 election of directors:

2 (1) An acquiring person or member of a group with respect  
3 to a control share acquisition.

4 (2) An officer of the issuing public corporation.

5 (3) An employee of the issuing public corporation who is  
6 also a director of the corporation.

7 NEW LETTERED PARAGRAPH. 1. "Issuing public corporation"  
8 means a corporation that has all of the following:

9 (1) One hundred or more shareholders.

10 (2) Its principal place of business, its principal office,  
11 or substantial assets within Iowa.

12 (3) One or more of the following conditions:

13 (a) More than ten percent of its shareholders reside in  
14 Iowa.

15 (b) More than ten percent of its shares are owned by Iowa  
16 residents.

17 (c) At least ten thousand of its shareholders reside in  
18 Iowa.

19 The residence of a shareholder is presumed to be the  
20 address appearing in the records of the corporation.

21 Shares held by banks, except as trustee or guardian,  
22 brokers, or nominees shall be disregarded for purposes of  
23 calculating the percentages or numbers described in this  
24 paragraph.

25 Sec. 3. Section 502.218, Code Supplement 1987, is amended  
26 to read as follows:

27 502.218 APPLICATION OF SECURITIES LAW.

28 All of the provisions of this chapter which are not in  
29 conflict with sections 502.211 through 502.218 ~~502.218~~ 502.225, apply  
30 to any takeover offer involving a target company and a control  
31 share acquisition of an issuing public corporation.

32 Sec. 4. NEW SECTION. 502.219 LAW APPLICABLE TO CONTROL  
33 SHARE VOTING RIGHTS.

34 Unless the corporation's articles of incorporation or  
35 bylaws provide, before the control share acquisition, that

1 this chapter does not apply to control share acquisitions of  
2 shares of the corporation, control shares of an issuing public  
3 corporation acquired in a control share acquisition have only  
4 such voting rights as are conferred by section 502.223.

5 Sec. 5. NEW SECTION. 502.220 NOTICE OF CONTROL SHARE  
6 ACQUISITION.

7 A person who proposes to make or has made a control share  
8 acquisition may at the person's election deliver an acquiring  
9 person statement to the issuing public corporation at the  
10 issuing public corporation's principal office. The acquiring  
11 person statement must set forth all of the following:

12 1. The identity of the acquiring person and each other  
13 member of any group of which the person is a part for purposes  
14 of determining control shares.

15 2. A statement that the acquiring person statement is  
16 given pursuant to this chapter.

17 3. The number of shares of the issuing public corporation  
18 owned, directly or indirectly, by the acquiring person and  
19 each other member of the group.

20 4. The range of voting power under which the control share  
21 acquisition falls or would, if consummated, fall.

22 5. If the control share acquisition has not taken place,  
23 both of the following:

24 a. A description in reasonable detail of the terms of the  
25 proposed control share acquisition.

26 b. Representations of the acquiring person, together with  
27 a statement in reasonable detail of the facts upon which they  
28 are based, that the proposed control share acquisition, if  
29 consummated, will not be contrary to law, and that the  
30 acquiring person has the financial capacity to make the  
31 proposed control share acquisition.

32 Sec. 6. NEW SECTION. 502.221 SHAREHOLDER MEETING TO  
33 DETERMINE CONTROL SHARE VOTING RIGHTS.

34 1. If the acquiring person so requests at the time of  
35 delivery of an acquiring person statement and gives an

1 undertaking to pay the corporation's expenses of a special  
2 meeting, within ten days thereafter, the directors of the  
3 issuing public corporation shall call a special meeting of  
4 shareholders of the issuing public corporation for the purpose  
5 of considering the voting rights to be accorded the shares  
6 acquired or to be acquired in the control share acquisition.

7 2. Unless the acquiring person agrees in writing to  
8 another date, the special meeting of shareholders shall be  
9 held within fifty days after receipt by the issuing public  
10 corporation of the request.

11 3. If no request is made, the voting rights to be accorded  
12 the shares acquired in the control share acquisition shall be  
13 presented to the next special or annual meeting of  
14 shareholders.

15 4. If the acquiring person so requests in writing at the  
16 time of delivery of the acquiring person statement, the  
17 special meeting must not be held sooner than thirty days after  
18 receipt by the issuing public corporation of the acquiring  
19 person statement.

20 Sec. 7. NEW SECTION. 502.222 NOTICE OF SHAREHOLDER  
21 MEETING.

22 1. If a special meeting is requested, notice of the  
23 special meeting of shareholders shall be given as promptly as  
24 reasonably practicable by the issuing public corporation to  
25 all shareholders of record as of the record date set for the  
26 meeting, whether or not the shareholders are entitled to vote  
27 at the meeting.

28 2. Notice of the special or annual shareholder meeting at  
29 which the voting rights are to be considered must include or  
30 be accompanied by both of the following:

31 a. A copy of the acquiring person statement delivered to  
32 the issuing public corporation pursuant to this chapter.

33 b. A statement by the board of directors of the cor-  
34 poration, authorized by its directors, of its position or  
35 recommendation, or that it is taking no position or making no

1 recommendation, with respect to the proposed control share  
2 acquisition.

3 Sec. 8. NEW SECTION. 502.223 RESOLUTION GRANTING CONTROL  
4 SHARE VOTING RIGHTS.

5 1. Control shares acquired in a control share acquisition  
6 have the same voting rights as were accorded the shares before  
7 the control share acquisition, but only to the extent granted  
8 by resolution approved by the shareholders of the issuing  
9 public corporation.

10 2. To be approved under this section, the resolution must  
11 be approved by both of the following:

12 a. Each voting group entitled to vote separately on the  
13 proposal, by a majority of all the votes entitled to be cast  
14 by that voting group, with the holders of the outstanding  
15 shares of a class being entitled to vote as a separate voting  
16 group if the proposed control share acquisition would, if  
17 fully carried out, result in any of the changes described in  
18 sections 496A.68 and 496A.76.

19 b. Each voting group entitled to vote separately on the  
20 proposal, by a majority of all the votes entitled to be cast  
21 by that group, excluding all interested shares.

22 Sec. 9. NEW SECTION. 502.224 REDEMPTION OF CONTROL  
23 SHARES.

24 1. If authorized in a corporation's articles of  
25 incorporation or bylaws before a control share acquisition has  
26 occurred, control shares acquired in a control share  
27 acquisition with respect to which no acquiring person  
28 statement has been filed with the issuing public corporation  
29 may, at any time during the period ending sixty days after the  
30 last acquisition of control shares by the acquiring person, be  
31 subject to redemption by the corporation at the fair value  
32 thereof pursuant to the procedures adopted by the corporation.

33 2. Control shares acquired in a control share acquisition  
34 are not subject to redemption after an acquiring person  
35 statement has been filed unless the shares are not accorded

1 full voting rights by the shareholders as provided in section  
2 502.223.

3 Sec. 10. NEW SECTION. 502.225 RIGHTS OF DISSENTING  
4 SHAREHOLDERS.

5 1. Unless otherwise provided in a corporation's articles  
6 of incorporation or bylaws before a control share acquisition  
7 has occurred, if control shares acquired in a control share  
8 acquisition are accorded full voting rights and the acquiring  
9 person has acquired control shares with a majority or more of  
10 all voting power, all shareholders of the issuing public  
11 corporation have dissenters' rights as provided in this  
12 chapter.

13 2. As soon as practicable after such events have occurred,  
14 the board of directors shall cause a notice to be sent to all  
15 shareholders of the corporation advising them of the facts and  
16 that they have dissenters' rights to receive the fair value of  
17 their shares pursuant to section 496A.78.

18 3. As used in this section, "fair value" means a value not  
19 less than the highest price paid per share by the acquiring  
20 person in the control share acquisition.

21 Sec. 11. This Act takes effect as to all control share  
22 acquisitions on or after January 1, 1989.

23 EXPLANATION

24 This bill is an anticorporate takeover bill modeled on the  
25 Indiana model recently approved by the United States Supreme  
26 Court in CTS Corporation v. Dynamics Corporation of America,  
27 481 U.S. \_\_\_, 95 L.Ed.2d 67, 107 S.Ct. 1637 (1987).

28 Section 1 defines the key term "control shares" as shares  
29 that have the power, either directly or indirectly, to  
30 exercise voting power of certain specified strengths in the  
31 election of a public corporation's directors.

32 Section 2 defines terms including: "control share  
33 acquisition", the key as to the time when restrictions under  
34 the bill become effective; "interested shares"; and "issuing  
35 public corporation", the class of corporations to which the

1 control share acquisition restrictions apply.

2 Section 3 applies other provisions of the securities  
3 chapter to a control share acquisition.

4 Section 4 permits corporations to opt out of restrictions  
5 on control share acquisitions imposed in the bill by provision  
6 in the corporation's articles of incorporation or bylaws.

7 Section 5 requires an acquiring person of control shares to  
8 notify the target corporation and provide certain information.

9 Sections 6 and 7 provide for notice and conduct of a  
10 special meeting of the corporation's shareholders at the  
11 acquiring person's expense within a limited time after the  
12 notice of control share acquisition.

13 Section 8 restricts control share voting by requiring a  
14 resolution to be approved by the other shareholders to grant  
15 the control shares the same voting rights they had prior to  
16 the acquisition. The resolution must be approved by all  
17 voting classes.

18 Section 9 provides for the redemption of control shares in  
19 limited circumstances if prior provisions are made in the  
20 articles or bylaws.

21 Section 10 grants certain rights to dissenting  
22 shareholders, unless otherwise limited by the articles or  
23 bylaws, including the dissenter's rights provided for under  
24 existing law by section 496A.78.

25 Section 11 provides a special effective date. The bill  
26 takes effect for acquisitions on or after January 1, 1989.

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